

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

TRADESOURCE, INC.

and

Cases 04-CA-134287  
04-CA-149042

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 98

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for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on July 14 and 15, 2015. The consolidated complaint, as amended at the hearing, alleges that Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire three named employee applicants in July 2014, and by refusing to hire and consider for hire one of those applicants, Michael Quinn, in February and March 2015, because of their affiliation with the Charging Party Union (hereafter the Union). It also alleges that Respondent violated Section 8(a)(4) and (1) of the Act by refusing to hire and consider for hire Quinn in February and March 2015, because of charges filed with the Board on his behalf. The Respondent filed an answer denying the essential allegations in the complaint.

After the trial, the General Counsel and the Respondent filed briefs and reply briefs, which I have read and considered. The Union submitted a statement joining the General Counsel's initial brief. Based on those briefs and the entire record, including the testimony of witnesses and my observation of their demeanor, I make the following

## FINDINGS OF FACT

### I. Jurisdiction

Respondent, a Delaware corporation whose headquarters are in Warwick, Rhode Island, is a nationwide staffing company that provides workers to construction industry employers. Tr. 150, 308. This case involves Respondent's location in Plymouth Meeting, Pennsylvania. During a representative one-year period, Respondent provided services, from its Plymouth Meeting location, valued in excess of \$50,000 to customers outside the Commonwealth of Pennsylvania. Accordingly, I find, as Respondent admits, that it is an employer "within the meaning of Section 2(2), (6) and (7) of the Act."

I also find, as Respondent admits, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. Alleged Unfair Labor Practices

#### A. The Facts

##### Background

As indicated above, Respondent provides workers to construction industry employers. Respondent's website describes itself as a company that recruits skilled workers, including electricians, and provides them to its clients, with whom it has agreements. The Respondent basically takes care of all labor costs for its clients and is reimbursed and paid by the client for its services. The website states that Respondent pays "workers compensation, payroll taxes, benefits and other associated costs." The website also states that, if the client is not satisfied with "one of our tradespeople," Respondent will replace the tradesperson and the client will not be charged for the first 8 hours of the replacement. G.C. Exh. 44. Respondent's clients periodically notify it of their need for workers. Respondent then enters that information in its Avionte computer system. Tr. 154-156, 198. But, aside from occasional job visits, primarily for safety purposes, Respondent has no on-the-job contact with employees once they have been assigned to a client. Tr. 200-202, 220-221.

Respondent obtains employees from several different sources, including employment websites or job boards. An example of such a website is CareerBuilder.com, the site of a Chicago based company of that name. Its website permits employers to post advertisements for jobs to which employee applicants respond. In addition to applying for a particular job posting, applicants may register their name and submit a resume with CareerBuilder. The name and resume is then added to the CareerBuilder database of resumes. Employer customers of CareerBuilder may, independent of applicants' responses to particular job advertisements, search CareerBuilder's database for potential employment candidates. G.C. Exh. 21.

Once Respondent secures applicants from whatever source, it undertakes its own hiring. Respondent's hiring process is as follows: Applicants fill out Respondent's own application form and then are interviewed by a representative of Respondent. In this case, the representatives are Account Manager Jeffrey Slotnick and Resource Manager Jeremie Budesha. They work out of Respondent's offices in Plymouth Meeting, Pennsylvania or Belmar, New Jersey; those offices cover southwestern Pennsylvania, Delaware, and southern New Jersey. Tr. 151-152.<sup>1</sup>

During the interview process, the applicant completes an I-9 form and a safety questionnaire and views a safety video. The applicant must also take and pass a saliva drug test. If the applicant successfully completes the interview process, he is hired and issued a hard hat, safety goggles and an employee handbook. As Account Manager Slotnick conceded, at that point, the applicant is hired and becomes an employee of Respondent. Tr. 169-170. New hires are also given time cards that they must use when they report to a construction job of one of Respondent's clients. Tr. 23-31, 143-145, 164-166, 173, 284, 296-300, 374-377. In addition to paying wages for the employees it hires and sends out to clients, Respondent also offers them health benefits, vacation and holiday pay, and a retirement plan, all of which are set forth in the handbook that is given to new hires. G.C. Exhs. 66 and 67.

Once Respondent hires employee-applicants, those workers are eligible to be placed with client employers who ask Respondent for workers. New hires may be sent to a client contractor's job site immediately or after some time, depending on circumstances. Tr. 170. The employees must call Respondent to check on work availability and let Respondent know when their existing job is completed. Tr. 172. Indeed, they must sign a statement of availability, which provides that, if the employee does not maintain contact with Respondent, the employee may be viewed as "not available for work and to have voluntarily resigned from employment." Tr. 172-173, G.C. Exh. 30. After the hired employee is sent to a client's job site, the employee fills out one of the Respondent's time cards and submits it to the employer client. This is done weekly. The client contractor then signs the time card and submits it to Respondent, who pays the employee and bills the contractor. Tr. 169. Respondent keeps extensive records of its contacts with employees, as well as listings of hires and assignments. See G.C. Exhs. 54, 55, 48 and 49.

#### The Union's Salting Campaign Targeting Respondent

The Union operates a salting program that attempts to place its members and other electricians affiliated with the Union with nonunion employers. Tr. 387-388. Under Board law, salts are "individuals, paid or unpaid, who apply for work with a nonunion employer in furtherance of a salting campaign." A "salting campaign" in turn is defined as a campaign in which a union sends applicants to an unorganized jobsite "to obtain employment and then organize the employees." *Tradesmen International, Inc.*, 351 NLRB 579, 580, fn. 6 (2007), citing authorities.

The Union has attempted to organize Respondent and some of its client contractors, but has been unsuccessful in that effort. Tr. 387-388. This case involves the attempt by several

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<sup>1</sup> In its answer, Respondent admitted that Slotnick and Budesha are supervisors and agents of Respondent within the meaning of the Act.

salts, that is, Union members or nonmembers with some affiliation with the Union, to obtain jobs with Respondent. None of these salts and job applicants was paid for his efforts by the Union. As shown in more detail later in this decision, some of these salts and job applicants openly indicated their affiliation with the Union and others did not. And all were seeking work because they were either out of work or would soon be out of work.

#### Respondent's Animus Against the Union

On July 3, 2012, Marc Nordo, a member of the Union who did not initially reveal his union membership to Respondent, was hired as an electrician after speaking with Jeff Slotnick. Tr. 284. Nardo was sent out on an electrician's job two days later. He continued to work with Respondent's client-employers for the next two weeks. At one point, however, later in the month of July, Slotnick called Nordo and asked if he was union. Nordo replied in the affirmative. Slotnick then said some his contractors objected to union workers, but asked Nordo not to mention his union status on the job. Slotnick told Nordo that he was going to send another "Local 98 kid" to the job Nordo was working on, and he asked that they not hand out cards or handbills. Nordo promised he would not, and stated that he was "just here to work." Tr. 285-286. After this conversation with Slotnick, Nordo did not work again for Respondent or its clients, despite continually calling Respondent and asking about jobs. The only time he was offered jobs was to locations that were too far from his home. Tr. 288-291.<sup>2</sup>

Also on July 3, 2012, Victor Monaco went to Respondent's Plymouth Meeting office, without an appointment, and applied for work as an electrician. He presented his resume, which indicated that he was a member of the Union, to Jeff Slotnick, who asked him what the Union thought about Monaco working non-union. Monaco responded that that was between him and the Union. Slotnick told Monaco that his contractors did not "like to use union people." Tr. 141. Slotnick also mentioned that, on an earlier occasion, the Union had put up a picket line at one of his contractor's jobs and the contractor blamed him, Slotnick, for it. Monaco replied that he was just looking for a job. Slotnick then said that, if he hired Monaco, he, Monaco should deny that he was a member of the Union and let Slotnick know if anyone asked him about the matter. Tr. 142. Monaco returned two days later, and, after completing the necessary paperwork and passing the drug test, he was given time cards and an employee handbook, thus indicating he was hired. Tr. 143-145. During this second meeting, Slotnick repeated his concerns about Monaco not revealing his membership in the Union, stating again that his customers did not want to use union workers. Slotnick also showed him a video of a Union picket line and referred to Local 98, as "f---n crazy and absolutely nuts." Tr. 144. The meeting ended when Slotnick told Monaco that he would get in touch. The two made contact, but Monaco never actually worked for a client of Respondent, although he was once offered a job that he turned down. Tr. 146-148.<sup>3</sup>

<sup>2</sup> The above is based on Nordo's uncontradicted testimony. Slotnick did not deny Nordo's account of their encounters, even though Slotnick was present at the hearing and testified on other matters. Nordo's demeanor was impressive and his testimony was straight forward and credible. In addition, his testimony survived cross-examination and was confirmed by his pre-trial affidavit.

<sup>3</sup> The above is based on Monaco's uncontradicted and credible testimony. His testimony is enhanced because it was essentially corroborated by a similar exchange based on the uncontradicted testimony of Nordo, who spoke with Slotnick at about the same time.

## Respondent Dispenses With In Person Applications

Sometime in February 2013, Respondent posted a notice on the door of its Plymouth Meeting office stating as follows (G.C. Exh. 12):

Effective: February 20, 2013

TradeSource, Inc. will no longer be accepting resumes that are dropped off at the office, delivered in person, sent by facsimile or via e-mail.

TradeSource, Inc. will post ads on employment on job boards (e.g. CareerBuilder, Craigslist, etc.) when we are in need, along with searching the job boards (e.g. CareerBuilder, Craigslist, etc.) for resumes with desired qualifications and skills.

Thank you for your interest.

That notice remained posted at least through June 2014 (G.C. Exh. 56) and there is no evidence that it was ever removed. Indeed, Budesha testified that the sign accurately sets forth Respondent's present policy. Tr. 324.<sup>4</sup>

## Respondent's Use of CareerBuilder in Summer of 2014

Respondent has been a customer and employer user of CareerBuilder since at least February 14, 2014. Pursuant to its contract with CareerBuilder, Respondent posts job advertisements to which applicants can respond with an online application and resume. Some of Respondent's advertisements are blind, that is, they give no indication of the entity that posted them; and some are not. Those ads may remain on the website continuously and for some time. Tr. 158-162. Respondent may also search for potential applicants using CareerBuilder's application database and resume database and using customized search terms for applicants and resumes. G.C. Exh. 21.

Respondent receives responses to its advertisements from CareerBuilder by email. This would include the applicant's phone number, email address and resume. Those emails from CareerBuilder are searchable. Tr. 167-169. For the local office, Jeremie Budesha is the person who receives the emails from CareerBuilder. Tr. 278. Respondent then gets in touch with the applicant and initiates its own hiring process that has been described above. Tr. 164-165.

Respondent continued to utilize CareerBuilder throughout the summer of 2014. It posted a blind job advertisement for electricians and electricians' helpers on CareerBuilder from July 3

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<sup>4</sup> The policy does not appear to be a hard and fast one because, in early March 2015, applicant Rene Andino called Budesha about an electrician's job, after being told about possible hiring by another applicant, Francisco Acosta. Andino had not utilized the websites mentioned in Respondent's notice and Acosta was not an existing employee when Andino called Budesha. Andino and Acosta were interviewed at the same time by Budesha, who thereafter hired them, as shown in more detail later in this decision.

through September 23, 2014. G.C. Exhs. 20, 21, 27-29. The online applications to that job advertisement were emailed by CareerBuilder to Respondent at Jeremie Budes's email address. G.C. Exh. 21, Tr. 158-164, Although Slotnick has a role in the hiring process, as shown by his dealings with Nordo and Monaco, discussed above, it is Budes who does most of the hiring for Philadelphia and southwestern Pennsylvania (Tr. 151). Budes testified that, during the July-September 2014 period, he received emails from CareerBuilder in response to Respondent's ads "on a daily basis." Tr. 224-225.<sup>5</sup>

The above CareerBuilder emails included the names and resumes of applicants. Tr. 225. But Respondent utilized CareerBuilder even before the July 3 posting. Respondent's records show that, of the 13 electricians it hired in June 2014, 6 were obtained through Career Builder. G.C. Exh. 55.

#### The CareerBuilder Applications and Resumes of Union Salts

In July 2014, three Union salts, whose resumes prominently listed their affiliation with the Union, at least as having been trained by the Union, participated in its apprenticeship program or worked for union contractors (G.C. Exhs. 11, 16 and 22, Tr. 107-108), submitted those resumes with their applications for the above blind job advertisement placed by Respondent on the CareerBuilder website. None of them was thereafter hired or contacted by Respondent.

On June 24, 2014, Bryan Galie, a member of the Union and a qualified electrician, dropped off his resume in the mail slot at Respondent's Plymouth Meeting office. The next day, he followed up with an email to Jeff Slotnick, with another copy of his resume attached. Tr. 93-95, 107, G.C. Exhs. 16 and 17. The next day, Slotnick called Galie and asked Galie where he got Slotnick's email address. Galie candidly said he received the email address from "Local 98," the Union. Slotnick told Galie that if he needed anyone, he would get in touch. But he also told Galie to submit an on-line application. Tr. 94-97. Galie's uncontradicted testimony in this respect was supported by an entry placed in Respondent's computer system by Jeremie Budes on June 25, 2014, which stated that Galie had not followed the directions to submit applications

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<sup>5</sup> At another point in his testimony, Budes confirmed that, during July, August and September, he "looked for" workers on CareerBuilder "on average around once or twice a week," and that he was looking for an electrician in July 2014. Tr. 221-222. He seemed to suggest that he was only looking for "one" electrician at the time. But although there may have been one ad, which remained posted throughout the period, or perhaps several of the same ads, there clearly were many electricians that Respondent was seeking. To the extent that Budes meant to say that Respondent only needed to hire one electrician, I do not credit his testimony because the documentary evidence shows that Respondent hired some 11 electricians in July alone. See G.C. Exhs. 54 and 55. Budes also denied personally posting the ad that Respondent clearly posted on CareerBuilder; indeed, he said he did not "remember" having an ad on CareerBuilder. Tr. 222, 224, 228. But he also testified that he was the person who received the emails from CareerBuilder and that any resume or application that was submitted to the Respondent's ad during the July-September period would come automatically to him. Tr. 278. His testimony on these points was evasive and lacked candor. He thus demonstrated that his testimony was not reliable. In addition, as shown elsewhere in this decision, I have found his testimony on other issues unreliable and unworthy of belief. Thus, I am unable to credit Budes's testimony on any significant matter in this case.

through website companies, including CareerBuilder. The entry also confirmed that Galie told Slotnick he got Slotnick's email address "from Local 98." G.C. Exh. 56.

As instructed, and with the Union's help, on July 3, 2014, Galie submitted his application and resume with CareerBuilder, specifically targeting the blind ad placed by Respondent on the website for an electrician or electrician's helper. He was qualified for this job. Tr. 97-103, G.C. Exhs. 18-20. It is stipulated that CareerBuilder sent Galie's application and resume to Respondent at Budes's email address on July 3, 2014. G.C. Exh. 21, no. 4. Galie was never thereafter even contacted by Respondent and was not hired. He also credibly testified that, if contacted, he would have accepted an offer from Respondent. Tr. 97, 101-102.

Another qualified electrician, Song Tuy, applied for work with Respondent through CareerBuilder, with the Union's assistance. Like Galie, he first dropped off his resume at Respondent's Plymouth Meeting office. That was on June 24, 2014. Tuy observed the Respondent's notice stating that it was no longer accepting in person applications and suggesting on-line applications. He nevertheless called Respondent's office the next day to inquire about a job and apparently talked to Slotnick. Tuy was told to apply to CareerBuilder or Craigslist, in accordance with the Respondent's notice. Tuy also testified that when he mentioned he had left a resume at the Respondent's office the day before, he was told that Slotnick had seen it. Tr. 70-77, G.C. Exhs 11 and 12.<sup>6</sup>

In accordance with Respondent's instructions, Tuy registered with, and submitted his application and resume to, CareerBuilder, specifically applying for the electrician's position posted by Respondent. He was qualified for this position. CareerBuilder sent his application and resume to Respondent at Budes's email address on July 9, 2014. Tuy was not hired and was never contacted by Respondent thereafter. He credibly testified that he would have accepted a position with Respondent. G.C. Exh. 21, no. 5, G.C. Exhs. 13, 14 and 15, Tr. 77-84.

A third qualified electrician, Michael Quinn, applied to Respondent's job advertisement for an electrician and electrician's helper on the CareerBuilder website. This was a blind ad; he did not know who had placed it. He was qualified for this position, having been a member of the Union for 34 years and testifying about his extensive experience in great detail. Quinn attached his resume to his application that was dated July 12, 2014. His resume prominently lists his apprenticeship with the Union. CareerBuilder sent his application and resume to Respondent at Budes's email address on July 12, 2014. G.C. Exh. 21, no. 6, G.C. Exh. 22, 24, Tr. 112-120. Respondent actually viewed Quinn's resume on line, as shown by an entry on the CareerBuilder website indicating the last view was on October 7, 2014. But Quinn was never hired or contacted by Respondent. Tr. 120-133, G.C. Exh. 25.

When he submitted his application on CareerBuilder in July 2014, Quinn was finishing up a job and he testified credibly that he would have accepted a job offer from Respondent when

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<sup>6</sup> Tuy did not identify Slotnick as the recipient of his call, but, on cross-examination, Respondent's counsel assumed that it was Slotnick who talked with Tuy. Tr. 88-89. Slotnick did not testify about this matter, but since Slotnick and Budes were the only representatives who handled Respondent's local operations, it is likely that one of them answered Tuy's phone call and it is more likely that it was Slotnick, not only because of counsel's assumption, but also because Slotnick handled Galie's call at about the same time.

his existing job ended, including as late as October 2014, when he was only working “off and on.” Tr. 127-129, 134-138.

#### Respondent’s Hires From July Through September 2014

Among the applicants who registered with CareerBuilder and were hired by Respondent was Angelo Ercolono. He originally registered with CareerBuilder and sent his resume to the site in September of 2013; and he again sent his resume to CareerBuilder on July 29, 2014. Ercolono applied to the Respondent’s advertisement for an electrician on the CareerBuilder website on April 21, 2014. His application and resume were sent to Respondent on April 21, 2014. G.C. Exh. 21, no. 8. On July 7, 2014, Ercolono was contacted by Slotnick, who specifically told Ercolono that he had “found” Ercolono’s resume on CareerBuilder. Tr. 20. At the time Ercolono was working on a job for Summit Electric, which was apparently a client of Respondent. Ercolono said he was interested in working for Respondent and asked Slotnick to send him Slotnick’s contact information, which Slotnick did by email that same day. Ercolono was hired on July 31, 2014, after being interviewed by Budesá. Ercolono was told that jobs were available and that he would be placed with an employer, but he never was placed. However, as late as September 23, Budesá called Ercolono to offer him a job, which he declined. Tr. 20-36, 42-43, 204, 234, 235, G.C. Exhs. 2-4.<sup>7</sup>

Ercolono was a salt for the Union—a covert salt because he never revealed, either on his resume posted on the CareerBuilder website or in his dealings with Slotnick and Budesá, his affiliation with the Union.

Another covert salt for the Union was Jason Cugley. Like Ercolono, he registered with CareerBuilder and provided a resume that did not mention his affiliation with the Union. It is stipulated that he applied to the Respondent’s job advertisement for an electrician on the CareerBuilder website and that CareerBuilder sent his application and resume to Respondent at Budesá’s email address on July 13, 2014. G.C. Exh. 21, no. 7. Two days later, on July 15, Cugley was contacted by Slotnick, who told him that Respondent was hiring. They discussed a specific job and a specific pay rate and Slotnick told Cugley that he would have to come into the Respondent’s office to pass a drug test and then he would be hired and sent out on a job. Slotnick told Cugley to follow up with Budesá and gave him Budesá’s contact information.

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<sup>7</sup> The above is based on the credible testimony of Ercolono. Slotnick did not deny telling Ercolono that he had found Ercolono by checking with the CareerBuilder website. And he did not deny that he sent Ercolono an email on July 7, asking Ercolono to call him “about work when you have time,” with his telephone number. Tr. 203, G.C. Exh. 4. I reject Respondent’s contention, apparently based on Budesá’s testimony (Tr. 338-339) and its own documents (G.C. Exhs. 54 and 55), that Ercolono was a “referral,” and that Ercolono came to Respondent’s attention not through CareerBuilder, but by initially contacting Slotnick on a Summit Electric job. I specifically reject Budesá’s testimony that Ercolono initiated contact with Slotnick in a phone call Slotnick received and which Budesá overheard because he was in the office with Slotnick. Significantly, Budesá’s testimony was contrary to that of Slotnick, who testified he “could not recall” meeting Ercolono on a Summit Electric job and testified that he first met Ercolono during Ercolono’s interview with Budesá. Tr. 217. Moreover, Respondent stipulated that Ercolono’s application and resume was sent by CareerBuilder to Respondent on April 21, 2014. G.C. Exh. 21. Not only does the above refute Respondent’s contention that it did not utilize CareerBuilder to make contact with Ercolono, but it reflects adversely on the credibility of Budesá.



When Cugley finally reached Budesá later in July, he was specifically told about an available job, which paid less than what he understood from Slotnick. After thinking about accepting the lower paid job, Cugley called Budesá and said he was not interested. Tr. 51-67, G.C. Exhs. 5-9. In Respondent's view, Cugley remained available for employment at least for a few months after turning down the job in July. On October 1, 2014, Cugley received an email from Slotnick asking him to call Budesá "to discuss your availability (sic) we have immediate openings for electricians in your area." G.C. Exh. 10.<sup>8</sup>

In addition to Ercolono and Cugley, Respondent's records show that it hired another 15 electricians during the period July 18 through September 18, 2014.<sup>9</sup> Eleven, including Ercolono, were hired in July alone. G.C. Exhs. 54 and 55.<sup>10</sup> Some of these employees were sent out on jobs and some were not. Tr. 211-215, 233-234, 260-278, G.C. Exhs. 39, 53, 54, 58. One of those hires, Tajan Durham, was sent home from his job on July 17 because the client said he did have enough experience to do the work. G.C. Exh. 48. Another, Shane Milligan, refused a job assignment on July 22 because it was too far for the money. G.C. Exhs. 49, 58. According to one of Respondent's position statements (G.C. Exh. 58), another hire, Robert Niemczak, declined a job because of the location, and still another, Wifredo Cruz, was sent home for "lack of skills." Respondent's records also show that four of the electricians hired between July and September worked over 200 hours for client employers of Respondent and another worked over 100 hours. G.C. Exh. 54. Respondent conceded that it was filling positions "throughout the summer." Tr. 214. And Budesá testified that Respondent is "always looking for electricians." Tr. 236.

Although Respondent's records (G.C. Exhs. 54 and 55) list the source of the hired employees, those records were not accurate in at least one significant respect. As shown at footnote 7 above, Ercolono was erroneously listed as having been a "referral, but he clearly came to Respondent's attention through CareerBuilder. Of the 16 hires listed in Respondent's records as having been hired from July through September 2014, only one was identified as being from CareerBuilder; and he was not sent out on a job. This is a decided contrast with records discussed above that show 6 out of 13 hires in June were from CareerBuilder (G.C. Exh. 55), a circumstance that may not be unrelated to Respondent's handling of the CareerBuilder applications from the Union salts in July.

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<sup>8</sup> The above is based on Cugley's uncontradicted testimony. Neither Slotnick nor Budesá questioned Cugley's testimony about his conversations with them. Even though it appears that Cugley did not go through Respondent's formal hiring process and his name does not appear on any of Respondent's documents listing hires from July through September of 2014, the evidence discussed above shows that he was in effect hired and considered available for work by Respondent. The most significant piece of evidence in this respect is Slotnick's October 2014 email to Cugley asking about his availability for "immediate" electrician's job openings in his area.

<sup>9</sup> G.C. Exhs. 54 and 55 indicate the first hire dates were July 18, but also indicate that some of the hires also had a different earlier date titled, "date added."

<sup>10</sup> G.C. Exhs. 54 and 55 list 11 hires in July, including Ercolono, and 16, including Ercolono, from July through September; but Cugley is not listed. As indicated in footnote 8 above, however, Cugley was effectively hired and considered available for jobs.

## The Original Charge and Complaint

On August 7, 2014, the Union filed its initial charge in 4-CA-134287, alleging that Respondent had refused to consider or hire its members because of their affiliation with the Union. On January 29, 2015, the General Counsel issued a complaint in that case, alleging that Respondent had refused to hire Galie, Tuy and Quinn in July 2014 because of their affiliation with the Union. G.C. Exh. 1(a) and (c).

## The Denny's Job and the Refusal to Hire Quinn

On February 20, 2015, Denny's Electric, an electrical contractor with an upcoming job in Reading, Pennsylvania, contacted Respondent in order to obtain electricians. On February 23, Respondent provided two electricians to Denny's for the Reading job—Luis DeJesus and Deron Hall; a third electrician, William Torres, was contacted on February 27 and started on the job on March 3. This made a total of 3 electricians on the Reading job. At some point, about 7 to 10 days after they started, DeJesus and Hall left the job: DeJesus went to another Denny's job and Hall was released by Denny's because of "attendance issues." This required replacements. G.C. Exh. 38, Tr. 238-246, 356-365.

As indicated above, Quinn registered with CareerBuilder and submitted his resume in connection with one of Respondent's electrician's job advertisements in July 2014. His resume was sent to Respondent at that time and was specifically viewed thereafter by Respondent in October 2014. Quinn's name and resume remained on the CareerBuilder website thereafter and his resume was viewed again by Respondent—twice on February 25, 2015 and twice again on March 5, 2015. Tr. 123-124, 138, 240-241, G.C. Exh. 26. Budesá conceded that he viewed Quinn's resume on February 25. Tr. 242-243, G.C. Exh. 43. Budesá also conceded that he viewed Quinn's resume for a second time on March 5 (Tr. 362), the same day that Budesá viewed the CareerBuilder resume of Francisco Acosta, whose resume, unlike that of Quinn, had no reference to the Union. Tr. 240-242, 361-362, GC. Exh. 43.<sup>11</sup>

As shown below, Acosta and a friend of his were hired for the Denny's job, but Quinn was not. Quinn was never even contacted by Respondent. Quinn was working in February and March of 2015, but the job was coming to a close and he was looking for another job at that time.

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<sup>11</sup> Budesá's testimony on this issue, in conjunction with his pretrial affidavits, was so vacillating that it confirms my earlier observations that he was a totally unreliable witness. In his first affidavit given and signed on October 24, 2014, he stated that he did not recognize the name Michael Quinn. G.C. Exh. 42. Yet there is documentary evidence that Respondent viewed Quinn's resume on October 7, just three weeks before. In his second affidavit, given and signed May 28, 2015, Budesá said that he could not "recall" viewing Quinn's resume in October, but it would "definitely" be he or Slotnick who viewed the resume. Tr. 248, G.C. Exh. 43. Also, in his second affidavit (G.C. Exh. 43), he conceded that he viewed Quinn's resume on February 25, but he tried to explain away the obvious implication that he rejected Quinn for the Denny's job by also stating that the Denny's job "came in" after that date. 241-243. That was obviously false since it was conceded that the Denny's job "came in" on February 20. G.C. Exh. 38. When confronted with this discrepancy, he turned defensive, rambling on in an almost incoherent manner. See Tr. 243-248. Budesá further stated in his second affidavit, and confirmed in his testimony before me, that he actually considered Quinn for the Denny's job and conceded that Quinn had the experience required for the job. G.C. Exh. 43, Tr. 243-248, 356-365.

The job Quinn was working on ended on March 12, 2015. Tr. 128-129. Quinn lives about 30 miles away from Reading, Pennsylvania, about a 40 minute drive, and he credibly testified that he would have taken the Denny's job in Reading, if offered. Tr. 128.

Electrician Francisco Acosta was not a member of the Union, but, with the assistance of the Union, registered with and submitted his resume to CareerBuilder sometime in 2014. He updated his resume on February 18, 2015, but nothing in his resume contains any reference to the Union. Tr. 369-371, G.C. Exhs. 62 and 63. On March 5, 2015, Budesá viewed Acosta's resume on CareerBuilder. Tr. 239, G.C. Exh. 41. That same day, Acosta received an email from Budesá stating that Budesá had received Acosta's resume and asking Acosta to call him if Acosta was still looking for work. In the email, Budesá listed his telephone number and stated that he had an opening for an electrician's job. G.C. Exh. 61.

Acosta called Budesá the next day and Budesá confirmed that he had seen Acosta's resume and had a job for him. They discussed pay and Budesá said the job paid \$22 per hour. They arranged for an interview in Budesá's office the next day. Tr. 372-273. Acosta then called his friend, Rene Andino, another out-of-work electrician, with no affiliation with the Union. Andino arranged with Budesá to come in with Acosta for an interview. Both Andino and Acosta came in to interview with Budesá on Monday, March 9. They filled out applications, passed the necessary tests and were hired. Budesá wanted them to start work on the Denny's project in Reading, Pennsylvania, the next day, but they asked to start on Wednesday, March 11, which they did. Tr. 373-377, 294-299, 302-303, G.C. Exhs. 60 and 64. Budesá did not tell Andino and Acosta much about the type of work they would be doing, but gave them information on where and to whom to report. Tr. 375, G.C. Exh. 65. According to Andino, the job involved fairly routine electricians work, including "roughing, bending pipe, pulling wire" and "working with transformers" as well as putting in "switchgear." Tr. 301-302. Andino, who was Acosta's neighbor, testified that the Denny's job in Reading was about a 45 minute drive from Lancaster, Pennsylvania, where they both lived. Tr. 294-295, 369, 305.

The above is based on the credible, mostly uncontradicted, and mutually corroborated testimony, of Acosta and Andino. At the time of the hearing, the Denny's job was ongoing. When he testified, Acosta was still working for Respondent at the Denny's job; Andino had quit the week before he testified. They worked 40 hours per week at the Denny's job. Tr. 376-377, 302-303, 305.

#### New Charge and Complaint in Case 4-CA-149042, the Quinn Refusal to Hire Allegations

Although the formal file in this consolidated case (G.C. Exh. 1) does not include a copy of the charge or amended charge in Case 4-CA-149042, the consolidated complaint states that the charge in that case was filed on March 27, 2015 and was served on Respondent on March 30, 2015; an amended charge in that case was filed and served on June 24, 2015. I assume that the charge and the amendment alleged violations in connection with the refusal to hire or consider for hire Quinn in February and March 2015. The consolidated complaint, which issued on June 24, 2015, differed from the original complaint only in adding the new case number and the February and March allegations as to Quinn.

On May 15, 2015, during the investigation of the new charge, Respondent's attorney, Walter Zimolong, submitted a position statement to the General Counsel stating as follows (G.C. Exh. 36):

Moreover, it is mindboggling why Tradesource would consider Mr. Quinn because he (a) committed a felony by filing a false claim to the Board with his first charge; and (b) was otherwise maintaining a frivolous lawsuit. Tradesource does not consider individuals that knowingly violate federal law and that bring frivolous claims against the company.

On June 22, 2015, two days before the issuance of the consolidated complaint alleging violations in the refusal to hire Quinn, including a Section 8(a)(4) violation based on cooperating with the Board, Zimolong and counsel for the General Counsel apparently discussed Zimolong's May 15 letter and counsel's view that Zimolong admitted that Quinn was not hired because he had filed a charge against Respondent. In a letter sent the same day to counsel for the General Counsel, Zimolong said that his earlier statement was not an admission, but rather a "legal hypothetical and argument." G.C. Exh. 37. Zimolong also asserted that his statement in the May 15 letter was part of ongoing settlement discussions. But nothing in Zimolong's May 15 letter mentioned settlement; indeed, in that letter, he asked that the charge under investigation be dismissed. G.C. Exh. 36. In any event, Zimolong continued in his June 22 letter, in the event counsel for General Counsel believed that his earlier statement was an admission, it "is hereby disavowed and withdrawn." G.C. Exh. 37.

## B. Discussion and Analysis

### The Applicable Principles

Employee applicants, including applicants with staffing companies such as Respondent, have Section 7 rights under the Act, even though they are sponsored by unions and even though they are, unlike in this case, paid union organizers. They cannot therefore be discriminated against in hiring because of their union affiliation and an employer who engages in such discrimination violates Section 8(a)(3) and (1) of the Act. *NLRB v. Town & Country Electric*, 516 U.S. 85 (1995). See also *Tradesmen International, Inc.*, 351 NLRB 579 (2007); *Tradesmen International, Inc.*, 351 NLRB 399 (2007); *Action Multi-Craft*, 337 NLRB 268 (2001); and *Jobsite Staffing*, 340 NLRB 332 (2003).

In *FES*, 331 NLRB 9, 12 (2000), supplemental decision 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002), the Board set forth the following analytical framework for refusal-to-hire allegations:

To establish a discriminatory refusal to hire, the General Counsel must, under the allocation of burdens set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1<sup>st</sup> Cir. 1981), cert. denied 455 U.S. 989 (1982), first show the following at the hearing on the merits: (1) that the respondent was hiring or had concrete plans to hire, at the time of the alleged unlawful conduct;

(2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire . . . ; and (3) that antiunion animus contributed to the decision not to hire the applicants.

If the General Counsel meets his burden and the respondent fails to show that it would have made the same hiring decisions even in the absence of union activity or affiliation, then a violation of Section 8(a)(3) has been established. The appropriate remedy for such a violation is a cease-and-desist order, and an order to offer the discriminatees immediate instatement to the positions to which they applied or, if those positions no longer exist, to substantially equivalent positions, and to make them whole for losses sustained by reason of the discrimination against them.

331 NLRB at 12 (footnotes omitted).<sup>12</sup>

Discriminatory personnel actions, including refusals to hire, against employees or employee applicants for cooperating with the Board in the filing or investigation of charges violate Section 8(a)(4) and (1) of the Act. *NLRB v. Scrivener*, 405 U.S. 117 (1972). See also *Dubin Haskell Lining Corp. v. NLRB*, 386 F.2d 306 (4<sup>th</sup> Cir. 1967) (en banc); and *Host International*, 290 NLRB 442 (1988). Since motivation is the touchstone of a Section 8(a)(4) violation, as it is in a Section 8(a)(3) violation, such cases are likewise governed by the *Wright Line* analysis set forth above. See *American Gardens Management Co.*, 338 NLRB 644, 645 (2002).

Under *Wright Line*, the General Counsel must satisfy an initial burden of showing by a preponderance of the evidence that the employee's protected or union activity was a motivating factor in a respondent's adverse action. If the General Counsel meets that initial burden, the burden shifts to the respondent to show that it would have taken the same action even absent the employee's protected activity. The respondent does not meet its burden merely by showing that it had a legitimate reason for its action; it must persuasively demonstrate that it would have taken the same action in the absence of the protected conduct. And if the respondent's proffered reasons are pretextual—either false or not actually relied on—the respondent fails by definition to meet its burden of showing it would have taken the action for those reasons absent the protected activity. See *Alternative Energy Applications, Inc.*, 361 NLRB No. 139, slip op. 3 (2014), citing authorities.

The establishment of pretext also supports the initial showing of animus and discrimination. See *Wright Line*, supra, 251 NLRB at 1088 n. 12, citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9<sup>th</sup> Cir. 1966) (Where a respondent's reasons are false, it can be inferred "that the [real] motive is one that the [respondent] desires to conceal—an unlawful

<sup>12</sup> The *FES* decision also sets forth a similar analytical framework for refusal-to-consider allegations. 331 NLRB at 15. The complaint in this case alleges refusal-to-consider allegations along with refusal-to-hire allegations with respect to the treatment of employee-applicant Quinn in February and March 2015. Because I find a refusal-to-hire violation on that issue, I do not reach the refusal-to-consider allegations. As shown in my subsequent analysis of the issue, there were concrete plans to hire at the time Quinn was discriminated against. See *Tradesmen International*, cited above, 351 NLRB at 403.

motive—at least where . . . the surrounding facts tend to reinforce that inference.”). See also *Greco & Haines*, 306 NLRB 634 (1992); and *Lucky Cab Co.*, 360 NLRB No. 43, slip op. 4 (2014). Finally, a trier of fact may not only reject a witness’s testimony about his reasons for an adverse action, but also find that the truth is the opposite of that testimony. *Pratt (Corrugated Logistics), LLC*, 360 NLRB No. 48, slip op. 11-12 (2014) and cases there cited.

Applying the above principles to the facts in this case, I find that Respondent refused to hire employees Galie, Tuy and Quinn in July 2014 because of their affiliation with the Union. I also find that Respondent refused to hire Quinn on and after March 5, 2015 because of his affiliation with the Union and because charges were filed with the Board on his behalf. Because Respondent gave pretextual reasons for its actions, I further find that Respondent has not met its burden to show that it would have refused to hire those employee applicants for legitimate reasons in the absence of their protected activity.

#### The July 2014 Refusals to Hire

Applying the *FES* factors to the refusals to hire Galie, Tuy and Quinn, it is clear from the factual statement in this case that, from July to September 2014, Respondent was hiring or had concrete plans to hire at the time Respondent received CareerBuilder emails with their resumes. The record shows that Respondent hired at least 16 electricians during that period. It is also clear that Galie, Tuy and Quinn had the requisite experience to meet the requirements of the positions that Respondent was seeking to fill and actually did fill. In its opening brief (Br. 1, 10), Respondent admits that these initial two factors of *FES* have been met.

As for the final *FES* factor, I also find that union animus contributed to the decision not to hire Galie, Tuy and Quinn. Not only were they affiliated with the Union’s salting program, but their CareerBuilder resumes, which were sent to and received by Respondent in July 2014, clearly indicated their affiliation with the Union. Thus, Respondent clearly knew of their affiliation with the Union. Indeed, as shown in the factual statement, both Slotnick and Budesá knew, even before Galie’s formal application with CareerBuilder, that he was affiliated with the Union; and they likely also knew of Tuy’s affiliation because Tuy spoke to Slotnick on the same day Slotnick and Galie spoke. Significantly, after their CareerBuilder resumes were received by Respondent, none of the Union salts were ever hired or even contacted, while, so far as the record shows, none of the actual hires during the relevant period were known or shown to be affiliated with the Union. Of particular significance are the hire of covert Union salt Ercolono and the effective hire of covert Union salt Cugley. The inference of discrimination is obvious.

Respondent’s discriminatory animus is also demonstrated by its statements to and treatment of Nordo and Monaco after it found out that they too were affiliated with the Union. Slotnick told Monaco that the Union was “crazy” and his clients did not like to “use union people.” He also told Nordo not to engage in union activities and Monaco not to tell people about his union affiliation. Although those sentiments were expressed two years before, there is no evidence that Respondent changed its views on the matter. In his May 2015 affidavit, Budesá repeated that Respondent’s clients are not affiliated with unions and do not want to pay union scale wages, suggesting that Slotnick’s views remain operative to this day. G.C. Exh. 43.<sup>13</sup>

<sup>13</sup> In its opening brief (Brief 14-16), Respondent does not specifically focus on its treatment of Nordo

Respondent's discrimination and animus are further supported by the pretextual reasons offered by Respondent to defend its actions. Respondent's position on the July 2014 allegations, as derived from the testimony of Budesá, does not even assert a *Wright Line* defense. Rather, it asserts that no discrimination took place because: (1) Budesá did not read any of the CareerBuilder emails that were admittedly sent to him, containing the resumes of Galie, Tuy and Quinn (Tr. 332-337); (2) Respondent did not hire anyone from CareerBuilder during the July-September period (Tr. 337-340, 349-350); and (3) Respondent hired other union affiliated applicants over the last few years (Tr. 341-345, 353-356, 365-367). I reject these assertions not only because they are without merit, but also because they come from Budesá, a witness whom I discredit generally, as shown at various points in this decision. I specifically discredit Budesá's denial (Tr. 328) that a job applicant's union affiliation matters to him and his testimony (Tr. 342) that he does not know the difference between the Union involved in this case, which is engaged in salting Respondent, and other locals of the IBEW, which are not. Thus, Budesá's reasons amount to pretexts that not only support the inference of discriminatory motivation, but also fail to show that Respondent would have rejected the applicants for nondiscriminatory reasons.

Budesá's testimony that he did not read the CareerBuilder emails that contained the resumes of the Union salts is implausible and unbelievable in light of established facts. It was stipulated that the CareerBuilder emails of these salts were sent to his email address, but Budesá testified that there were so many of those emails that he was unable to read them all (Tr. 334-335). He specifically denied reading the resumes of Galie, Tuy and Quinn prior to the initial August 2014 charges in this case (Tr. 348-349), implying that he viewed them thereafter. Moreover, Budesá testified that he received emails from CareerBuilder "on a daily basis" and he generally "looked for" electricians on CareerBuilder "on average once or twice a week." He also testified that his job was to hire capable people and that the "more people we have available the better." Tr. 351. Indeed, when he testified about viewing Francisco Acosta's CareerBuilder resume in March 2015, he specifically stated that he "already knew" about Acosta because Acosta was "originally contacted" in December 2014 (Tr. 361), thus suggesting that he consulted the CareerBuilder website more than he originally testified; and he kept applicants in mind even if they were not actually hired. In ordinary circumstances, a person such as Budesá, who is responsible for selecting the most qualified applicants for Respondent's clients, would not stop looking just because he was overwhelmed with applicants.

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and Monaco, but rather addresses Slotnick's statements to them, asserting that the Board may not rely on the statements because they were mere opinions under Section 8(c) of the Act. That assertion is without merit. Slotnick's statements included admonishments not to engage in union activities while employed by Respondent, which went beyond the expression of opinion. Although the statements are not alleged and may not be found as specific violations because of obvious Section 10(b) limitations, the statements may be used as background to shed light on conduct within the limitations period. See *Wilmington Fabricators*, 322 NLRB 57, 58 n.6 (2000). The statements also amounted to unlawful coercion under Section 8(a)(1) and thus do not run afoul of Section 8(c). See *Penn Tank Lines, Inc.*, 336 NLRB 1066, 1068 (2001). See also *Boeing Co.*, 362 NLRB No. 195, slip op. 4 (2015).

Budesa's second point—that Respondent did not hire anyone from CareerBuilder during the relevant time period—makes no sense. First of all, the assertion itself is wrong: As shown in the factual statement, on July 31, Respondent did hire Ercolono, a covert salt, from CareerBuilder. Respondent's documents also show an additional CareerBuilder hire, Brian Sammons on September 15 (G.C. Exh. 54). Moreover, the record shows that, in June 2014, Respondent hired 13 electricians, 6 of whom were from CareerBuilder. G.C. Exh. 55. And, as shown above, Budesa originally viewed Acosta's CareerBuilder resume in December 2014 and contacted him at that time; and he later hired Acosta in March 2015. The question then becomes: Why would Budesa testify that Respondent did not hire from CareerBuilder from July through September 2014? Budesa offered no nondiscriminatory reason for the asserted hiatus, which is especially strange in view of Respondent's notice posted at its Plymouth Meeting location specifically directing that applicants use CareerBuilder. The reason might well be that, as also shown in the factual statement, Galie revealed to Respondent in late June, his affiliation with the Union. Indeed, at the same time, Slotnick also admitted to Tuy that he viewed Tuy's resume, which listed his affiliation with the Union. This was before they followed the instructions in Respondent's notice that they apply with CareerBuilder and the suggestion by Slotnick that they apply on-line, thus alerting Respondent to the possibility that Union salts were using CareerBuilder.

Finally, again relying on Budesa's testimony, Respondent contends that it did not discriminate on the basis of affiliation with the Union because it has hired other union members. According to Budesa, Respondent hired Union members Nordo and Monaco in 2012 (Tr. 344). As I have discussed earlier in this decision, Respondent's treatment of Nordo and Monaco was hardly benevolent. Not only did Respondent express its animus against hiring people affiliated with the Union to them, but, once it found out about their affiliation with the Union, it no longer used them on jobs. The other 3 hires mentioned by Budesa (Tr. 340-345, 353-356, G.C. Exhs. 2 and 3) were not hired in the July-September 2014 time frame; and they were not shown to be members of the Union, but perhaps of other locals of IBEW, which did not, so far as the record shows, use salting in order to place employees with Respondent, as did the Union in this case. Tr. 365-367. Significantly, Budesa did not assert, nor do Respondent's records (G.C. 54) show, that any of the electricians hired from July through September 2014 were known to be union members or people affiliated with the Union. Thus, here again, Budesa's testimony does not explain away the evidence of discrimination, but rather its lack of merit supports the finding of discrimination.

In these circumstances, I find that Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire Galie, Tuy and Quinn in July 2014 because of their affiliation with the Union.

#### The Refusal to Hire Quinn in March 2015

As shown in the factual statement, from on or about March 5, 2015, Respondent had at least 2 job openings to fill for the Denny's job in Reading. Budesa admittedly viewed Quinn's CareerBuilder resume both on February 25 and March 5. According to Budesa, who did the hiring for the Denny's job, Quinn "definitely" had the "experience required for the job." G.C. Exh. 43. Yet Quinn was not hired or even contacted for that job. Thus, as Respondent has admitted (Br. 1, 10), the first two aspects of the *FES* requirements for a refusal to hire showing have been satisfied.



Moreover, the evidence clearly shows that Respondent did not hire Quinn for the Denny's job because of his affiliation with the Union, which was prominently displayed on his CareerBuilder resume viewed by Budesá. In addition to the obvious animus shown in my finding that Respondent had earlier discriminatorily refused to hire Quinn and two other Union salts, it is reasonable to infer that the discrimination against Quinn continued with respect to the Denny's hiring. Two other applicants, Acosta and Andino, who did not reveal any affiliation with the Union, in a resume, application or otherwise, were hired at about the same time Quinn was rejected. Acosta's CareerBuilder resume was viewed for the first time the same day that Quinn's was viewed for the second time. Indeed, Andino was hired after simply calling Budesá, in violation of Respondent's policy against in person contacts. Moreover, Quinn was part of the original Board complaint alleging unlawful refusals to hire in July 2014. That initial complaint was filed on January 29, 2015, less than a month before Budesá viewed Quinn's CareerBuilder application and resume and less than a month before Respondent needed to provide electricians for the Denny's job. The timing of the naming of Quinn in the original complaint and the refusal to hire him in March 2015 is obvious, thus supporting the finding of discrimination not only on the basis of his affiliation with the Union, but also on the basis of his cooperation with the Board in the original charge and complaint. That finding is strengthened by the admission of Respondent's attorney, its agent, that Respondent would not hire someone who filed what it viewed as a false charge with the NLRB. Budesá himself tied his consideration of Quinn's resume in February and March 2015 to review of the earlier unfair labor practice charge.<sup>14</sup>

The above circumstances well support the General Counsel's initial burden of showing a discriminatory refusal to hire Quinn both because of his Union affiliation and because he cooperated with the Board in the charge filed on his behalf, each of which are protected activities. But, as demonstrated below, such a showing is reinforced by the pretextual reasons offered by Respondent for refusing to hire Quinn.

Here again, Respondent relies for its defense on the testimony of Budesá, who was doing the hiring for the Denny's job. Unlike in the July 2014 refusals to hire, Budesá did not deny viewing Quinn's CareerBuilder application and resume during the time he filled at least two of the Denny's jobs. Budesá's testimony concedes that he actually considered Quinn, although he never contacted him, but suggests that he rejected Quinn because (1) he lived too far away from the location of the Denny's job, unlike the other people Respondent hired and sent to that job; (2) he was "overqualified" since he had previously worked as a foreman; and (3) he had previously worked jobs that paid union scale, far above the pay of the Denny's job. Tr. 242-248, 356-365, 345-347, G.C. 43. All of these reasons are specious and pretextual.

Budesá's testimony about Quinn must be analyzed in the context of his completely unreliable testimony on other issues, particularly in connection with the unlawful July 2014

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<sup>14</sup> Budesá conceded that, when he viewed Quinn's CareerBuilder resume in February and March 2015, he was reviewing the resume with his attorney in connection with an investigation of the original complaint. Tr. 345-346. That does not rule out a finding that Quinn's resume was reviewed in connection with the Denny's job. There is no inconsistency between a review in connection with an investigation of the original complaint and a review for hiring purposes, especially since Budesá viewed Quinn's resume and Acosta's resume on the same day. Indeed, as discussed below, Budesá claimed to have considered Quinn for the Denny's job and rejected him on the merits.

refusals to hire. But his testimony about rejecting Quinn in March 2015 is inherently incredible on its own. He supposedly used factors gleaned from Quinn's resume to reject him without even contacting him. Thus, his surmise that Quinn lived too far away from the Denny's job in Reading was presumably based on his simple reading of Quinn's address in the resume. Significantly, he did not even talk to Quinn to see if he truly lived too far from the job. In fact, as Quinn testified, the job was only a 40 minute drive for him and he would gladly have accepted the job if offered. Tr. 128. Indeed, both Acosta and Andino, who were hired for the Denny's job at the same time Quinn was rejected, lived at least as far away from the Reading job. Contrary to Budes's testimony that they both lived in Reading itself (Tr. 362), they actually lived in Lancaster, about a 45 minute drive from Reading. Tr. 294, 305, 369. Thus, Budes gave false reasons for rejecting Quinn on the basis of geography. Budes also testified falsely about having secured Andino's name from Acosta in their initial conversation about the Denny's job. Tr. 362. That was contrary to both Acosta and Andino, whose testimony makes clear that Acosta did not tell Budes about Andino. It was Acosta, who, after initially talking to Budes about his application, separately called Andino and told him about a possible job opening. Andino then separately called Budes about the job. Tr. 372-373, 376, 294-295.

Budes's testimony, confirming his affidavit (Tr. 244, G.C. Exh. 43), about Quinn being overqualified, again without having consulted the applicant, is likewise not credible. It would seem that an employer honestly looking for good people would try to hire the best and someone who had once served as a foreman would be among the best. Indeed, Budes's testimony in this respect seems contradictory to his testimony that Quinn was "definitely" qualified for the Denny's job (Tr. 245, G.C. Exh. 43). Apparently undaunted by such contradiction, Budes also offered the conclusory assertion that the other people he hired for the Denny's job were "more qualified." Tr. 245. But that assertion was not supported by any further evidence, including the comparative resumes or applications. Moreover, Budes's reliance on this factor is questionable for another reason. Quinn testified that he only worked as a foreman briefly in the summer of 2014 (Tr. 132-133) and that he worked 99% of the time as a journeyman, including experience doing the kind of work that was being done on the Denny's job. Tr. 129-133. He also testified credibly that he would have accepted the Denny's job in March of 2015 because the job he was on was finishing up. Tr. 128. Budes would have found out about all of this, including the short period of time that Quinn worked as a foreman, had he at least contacted Quinn. But the real reason Budes did not contact Quinn, in my view, was that, when he read Quinn's resume, he focused not on Quinn's experience, but on that part of the resume that showed Quinn's affiliation with the Union.

Finally, most damaging is Budes's suggestion, made more sharply in his affidavit, that Quinn was rejected because he was earning union scale and Respondent's clients, apparently including Denny's, were not paying union scale and indeed did not have union contracts. Far from showing that Quinn was rejected for the Denny's job because of nondiscriminatory reasons, Budes's suggestion in this respect confirms that discriminatory reasons motivated Respondent's rejection of Quinn. To the extent that Budes's point can be stripped of its union considerations and viewed as assuming Quinn would not accept the job because it paid too little, it fails to withstand scrutiny. The best way to test whether Quinn would have rejected the Denny's job because it paid too little would have been to ask him about it. The fact that Budes did not simply reinforces the initial showing that Respondent rejected Quinn for the job because he was

affiliated with the Union and also because he had been part of the earlier discrimination that was brought to the attention of the Board.

In these circumstances, I find that Respondent refused to hire Quinn on and after March 5, 2015 because he was affiliated with the Union and because he cooperated with the Board in bringing the initial unfair labor practice case, all in violation of Section 8(a)(4), (3) and (1) of the Act.<sup>15</sup>

#### Conclusions of Law

1. By discriminatorily refusing to hire employee-applicants Bryan Galie, Song Tuy and Michael Quinn in July 2014 because of their affiliation with the Union, Respondent violated Section 8(a)(3) and (1) of the Act.

2. By discriminatorily refusing to hire employee-applicant Michael Quinn on and after March 5, 2015 because of his affiliation with the Union and because charges were filed on his behalf with the Board, Respondent violated Section 8(a)(3) and (1) and 8(a)(4) and (1) of the Act.

3. The above violations constitute unfair labor practices within the meaning of the Act.

#### Remedy

Having found that Respondent discriminatorily refused to hire certain individuals, as indicated above, the Respondent shall be ordered to offer them instatement and make them whole for any loss of earnings and other benefits they may have suffered as a result of the unlawful discrimination against them. Any backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). The duration of the backpay period shall be determined in accordance with *Oil Capital Sheet Metal*, 349 NLRB 1348 (2007).

#### ORDER

Respondent, Tradesource, Inc., its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Refusing to hire or consider for hire employee-applicants because of their union

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<sup>15</sup> Even though it is clear that Budesá viewed Quinn's CareerBuilder resume on February 25, as well as on March 5, I do not reach the issue whether Respondent refused to hire Quinn earlier than March 5, 2015. It is clear that Acosta and Andino were hired instead of Quinn at a time when all three were considered, but it is not clear that Quinn would have been hired and sent to the Denny's job before Torres, who was contacted on February 27 and sent to the job on March 3. At the time, Torres, who had been a previous hire, was on Respondent's available for work list. Tr. 239, 347, 360. Nor would it make any difference because it appears that Quinn would not have been available to start work before Torres. See Tr. 128.

affiliation and/or because they had charges filed with the National Labor Relations Board on their behalf.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer instatement to Bryan Galie, Song Tuy and Michael Quinn to the positions for which they applied, or, if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges to which they would have been entitled had they not been discriminated against.

(b) Make Bryan Galie, Song Tuy and Michael Quinn whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this Order.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post, at its Plymouth Meeting, Pennsylvania facility, copies of the attached notice marked "Appendix."<sup>16</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 7, 2014.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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<sup>16</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated at Washington, D.C., September 18, 2015.

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A handwritten signature in black ink, reading "Robert A. Giannasi". The signature is written in a cursive style with a large, stylized "R" and "G".

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Robert A. Giannasi  
Administrative Law Judge

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## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us or your behalf.  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to hire or consider for hire employee-applicants because of their union affiliation or because charges have been filed on their behalf with the National Labor Relations Board.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights listed above.

WE WILL offer reinstatement to Bryan Galie, Song Tuy and Michael Quinn to the positions for which they applied, or if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges to which they would have been entitled had they not been discriminated against.

WE WILL make Bryan Galie, Song Tuy and Michael Quinn whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

TRADESOURCE, INC  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov)

615 Chestnut Street, 7<sup>th</sup> Floor, Philadelphia, PA 19106-4404  
(215) 597-7601, Hours: 8:30 am to 5 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/04-CA-134287](http://www.nlr.gov/case/04-CA-134287) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING  
AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY  
QUESTIONS CONCERNING THIS NOTICE OF COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED  
TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5353.